

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS on behalf of STUDENT,

v.

LAGUNA BEACH UNIFIED SCHOOL  
DISTRICT.

OAH CASE NO. 2009040753

ORDER GRANTING MOTION TO  
DISMISS

On April 20, 2009, attorney Nora Asahara, on behalf of Student, filed with the Office of Administrative Hearings (OAH) a due process hearing request (complaint) against the Laguna Beach Unified School District (District).

On May 1, 2009, attorney Epiphany Owen, on behalf of the District, filed a motion to dismiss Student's claims under Section 504 of the Rehabilitation Act (Section 504) and Section 1983 of title 42 United States Code (Section 1983). OAH received no response from Student.

APPLICABLE LAW and DISCUSSION

The purpose of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et. seq.) is to "ensure that all children with disabilities have available to them a free appropriate public education" (FAPE), and to protect the rights of those children and their parents. (20 U.S.C. § 1400(d)(1)(A), (B), and (C); see also Ed. Code, § 56000.) A party has the right to present a complaint "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child." (20 U.S.C. § 1415(b)(6); Ed. Code, § 56501, subd. (a) [party has a right to present a complaint regarding matters involving proposal or refusal to initiate or change the identification, assessment, or educational placement of a child; the provision of a FAPE to a child; the refusal of a parent or guardian to consent to an assessment of a child; or a disagreement between a parent or guardian and the public education agency as to the availability of a program appropriate for a child, including the question of financial responsibility].) The jurisdiction of OAH is limited to these matters. (*Wyner v. Manhattan Beach Unified Sch. Dist.* (9th Cir. 2000) 223 F.3d 1026, 1028-1029.)

OAH does not have jurisdiction to entertain claims based on Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) or Section 1983 of Title 42 United States Code.

In this matter, Student complaint includes five issues, and in Issues One and Two, Student alleges that the District denied her a FAPE under IDEA, and also violated Section 504 and Section 1983. Because OAH does not have jurisdiction to hear Student's claims that the District violated Section 504 and Section 1983, these claims are dismissed.

#### ORDER

1. Student's allegations within Issues One and Two that the District violated Section 504 of the Rehabilitation Act and Section 1983 of title 42 United States Code are dismissed. The remainder of the Issues One and Two, and Issues Three, Four and Five, in which Student alleges the District denied her a FAPE, are not dismissed, and the matter shall proceed as to those issues.

2. All previously scheduled dates remain on calendar.

Dated: May 11, 2009

/s/

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PETER PAUL CASTILLO  
Administrative Law Judge  
Office of Administrative Hearings